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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Revision of Part 22 and Part 90)	WT Docket No. 96-18
of the Commission's Rules to)	
Facilitate Future Development)	
of Paging Systems)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	

To: The Commission

REPLY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. § 1.429(g), hereby submits its reply in response to oppositions to certain petitions for reconsideration of the Commission's Second Report and Order (the "SR&O")¹ in the above-captioned proceeding. For the reasons stated below, the Commission should exempt from the geographic paging license auctions incumbent licensees that serve a substantial portion of their market.

With the exception of certain nationwide paging channels, the Commission has determined that all geographic paging licenses will be subject to auction. SR&O at ¶¶ 45 & 50. The Commission stated that it was "not persuaded by the commenters that channels already extensively used by an incumbent should be exempt from

¹ FCC 97-59, released February 24, 1997. Federal Register Summary at 62 Fed. Reg. 11616 (March 12, 1997).

the competitive bidding procedures or that eligibility should be restricted to incumbent licensees." SR&O at ¶ 45. The Commission should reconsider its decision in this regard and award incumbent licensees that serve a substantial portion of their market a geographic license.

In their petitions for reconsideration of the SR&O, a number of parties demonstrate that the public interest would be served by exempting from the geographic paging license auctions licensees that provide service to a large portion of the market area. For example, Arch Communications Group, Inc. states that "One of the primary ways in which the Commission can minimize the harmful effects of speculators is to exempt from the auction those paging channels on which incumbents can certify that 70 percent or more of the market's population is encompassed by the incumbent's existing service contours on those channels." Arch Petition at 7. Advanced Paging, Inc. states that "the Commission . . . should award geographic licenses without an auction to any incumbent licensee that prior to the auction already meets the five-year coverage requirement otherwise mandated for permanent retention of a geographic license." Advanced Paging, Inc. Petition at 4. See also PageNet Petition at 4-6, PCIA Petition at 4-7, Blooston, Mordkofsky, Jackson & Dickens Petition at 10-11, Metrocall, Inc. Petition at 6-11.

There are sound reasons to exempt incumbent licensees from the auction process. The Commission's auction policy will create artificial mutually exclusive situations contrary to the

Commission's auction authority. See 47 U.S.C. § 309(j)(6)(E) ("Nothing in this subsection [309(j)] or in the use of competitive bidding, shall be construed to relieve the Commission of the obligation in the public interest . . . to avoid mutual exclusivity in application and licensing proceedings"). As PCIA notes, it is quite possible that "[t]he approach adopted in the Second Report & Order will promote speculative filings and will likely increase the number of individuals defrauded by the sales pitches of applications mills." PCIA Petition at 5.

In deciding to subject incumbent licensees to an auction, the Commission reasoned "that open eligibility for paging licenses . . . potentially will result in further wide-area coverage of paging services." SR&O at ¶ 45. This observation may hold true for underserved areas; however, where the incumbent substantially serves its market, "additional bidders are likely to be speculators or competitors trying to block expansion by the incumbent." Blooston, Mordkofsky, Jackson & Dickens Petition at 10-11. Thus, the Commission's failure to grant incumbents that substantially serve their markets a license could impede, rather than foster, the provision of wide area service.

AirTouch Paging notes that "speculators and/or competitors can acquire a geographic area license and prevent the incumbent licensee from expanding its system in response to customer demand for five years, while building nothing for the first five years of the license term." Airtouch Paging Comments at 7 (May 9, 1997). Opening substantially built-out areas to auction also may

"increase[] the cost of service to the unserved area and ultimately the costs of the whole area by requiring the incumbent to buy that small portion at auction." Paging Network, Inc. Petition at 5. Such an outcome is contrary to the Commission's stated goal of encouraging wide area service.

Lastly, licensees providing service to a substantial portion of the market area should not be subject to auction, since only the incumbent will be able to satisfy the construction benchmarks set forth in the Commission's Rules.

For the reasons stated above, PRTC urges the Commission to recognize the substantial investment made by incumbent licensees to develop systems providing wide-area service in a market and award those serving a substantial portion of their market the corresponding geographic license.

Respectfully submitted,



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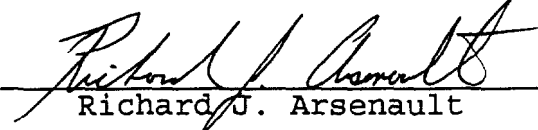
May 19, 1997

Counsel for Puerto Rico Telephone
Company

CERTIFICATE OF SERVICE

I, Richard J. Arsenault, hereby certify that a copy of the foregoing was hand delivered this 19th day of May, 1997 to:

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